

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE:

DARRELL S. RAYBURN and  
TAMMIE K. RAYBURN,

Debtors.

CASE NO. BK 09-40320  
CHAPTER 13

**MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

**COMES NOW** Mortgage Electronic Registration Systems, Inc. as nominee for U.S. Bank, N.A., its Successors and/or Assigns (hereinafter "U.S. Bank") a secured creditor of Debtors Darrell S. Rayburn and Tammie K. Rayburn, and hereby moves the Court for an Order granting relief from the Automatic Stay, pursuant to 11 U.S.C. § 362(d)(1), and in support of said Motion shows to the Court as follows:

1. That Debtors filed their Petition for Relief under Chapter 13 of the United States Bankruptcy Code on February 11, 2009.

2. That the Court has jurisdiction over this matter pursuant to 11 U.S.C. §362.

3. That on or about April 13, 2005, Debtors executed and delivered their Note in writing to Commercial Federal Bank, a FSB in the original principal amount of \$129,463.00 plus interest as it accrues at the rate of 6.280% per annum. A copy of said Note is attached hereto and marked as Exhibit "A".

4. That as security for said Note, on or about April 13, 2005, Debtors executed and delivered to Commercial Federal Bank as Lender and Mortgage Electronic Registration Systems, Inc., as nominee for Lender and Lender's successors and assigns (MERS) as Beneficiary, in writing their Deed of Trust wherein Debtors conveyed to MERS the following described real property commonly known as 4200 Holly Road, Lincoln, Nebraska, and legally described as follows:

LOT 11, BLOCK 4, KESSLER HEIGHTS, LINCOLN, LANCASTER  
COUNTY, NEBRASKA

A copy of said Deed of Trust is attached hereto and marked as Exhibit "B".

5. That U.S. Bank is the current servicer of Debtors' loan.

6. That the Debtors' Amended Chapter 13 Plan Post-Confirmation (hereinafter "Amended Chapter 13 Plan") generally provides for payment of U.S. Bank's claim by paying the

pre-Petition arrearage through their Amended Chapter 13 Plan and by paying the regular monthly mortgage payments directly to U.S. Bank as these payments ordinarily come due beginning with the first due date after the case is filed.

7. That the Debtors' Amended Chapter 13 Plan has not been approved by the Court.

8. That the Debtors have defaulted under the terms of their Amended Chapter 13 Plan by failing to make their post-Petition payments directly to U.S. Bank for the months of May 2010 (partial) through September 2010, with a current delinquency of \$4,936.51, plus attorney fees and costs incurred in filing this Motion.

9. That the total unpaid principal balance now due and owing under the terms of said Note and Deed of Trust is \$121,040.98.

10. That due to the Debtors failure to make their post-Petition payments directly to U.S. Bank for the months of May (partial) 2010 through September 2010, Debtors are in violation of their Amended Chapter 13 Plan, and U.S. Bank is entitled to relief from the Automatic Stay pursuant to 11 U.S.C. §362(d)(1).

11. That U.S. Bank requests that this Court waive the 14-day stay set forth in Bankruptcy Rule 4001(a)(3).

**WHEREFORE**, Mortgage Electronic Registration Systems, Inc. as nominee for U.S. Bank, N.A., its Successors and/or Assigns, a secured creditor of Debtors Darrell S. Rayburn and Tammie K. Rayburn, moves the Court for an Order granting relief from the Automatic Stay pursuant to 11 U.S.C. §362(d)(1), to allow it to exercise its rights under the Note and Deed of Trust and applicable state and other non-bankruptcy law, to allow it to foreclose its security interest in the real estate commonly known as 4200 Holly Road, Lincoln, Nebraska, and legally described as follows:

LOT 11, BLOCK 4, KESSLER HEIGHTS, LINCOLN, LANCASTER  
COUNTY, NEBRASKA

to allow it to commence proceedings for possession of the real estate after the foreclosure sale, if necessary, to allow it to offer, negotiate, enter into and/or accept any potential forbearance agreement, loan modification, refinance agreement, short sale agreement, deed-in-lieu of foreclosure or other loan workout or loss mitigation agreements, to join all necessary parties, for an Order waiving the 14-day stay set forth in Bankruptcy Rule 4001(a)(3), and for such other and further relief as the Court deems just and equitable.

**DATED** this 28<sup>th</sup> day of September, 2010

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., as Nominee for U.S. BANK, N.A.,  
its Successors and/or Assigns,  
a Secured Creditor,

By: /s/ *Matthew E. Eck*

For: LOCHER PAVELKA DOSTAL  
BRADDY & HAMMES, LLC  
200 The Omaha Club  
2002 Douglas Street  
Omaha, Nebraska 68102  
Phone: (402) 898-7000  
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meck@lpdbhlaw.com  
Matthew E. Eck

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2010, I electronically filed the foregoing Motion for Relief from the Automatic Stay with the Clerk of the United States Bankruptcy Court for the District of Nebraska using the CM/ECF system which sent notification of such filing by electronic mail to Robin L. Meyers, Debtors' Attorney; Kathleen Laughlin, Chapter 13 Trustee; and Patricia Fahey, Assistant U.S. Trustee, and I hereby certify that I have mailed by United States Mail, postage prepaid, the foregoing to the following non CM/ECF participants:

#### **DEBTORS**

Darrell S. Rayburn  
Tammie K. Rayburn  
4200 Holly Road  
Lincoln, Nebraska 68502

/s/ *Linda John*